

(e) The term *approving official* means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(f) The term *hearing official* means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21966, May 13, 1996; 74 FR 63308, Dec. 3, 2009]

§ 17.63 Approval of community residential care facilities.

The approving official may approve a community residential care facility, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, if that facility meets the following standards:

(a) *Health and safety standards.* The facility must:

(1) Meet all State and local regulations including construction, maintenance, and sanitation regulations;

(2) Meet the requirements of chapters 1–11, 32–33, and 43 and Annex A of the NFPA 101, the National Fire Protection Association's Life Safety Code Handbook, Tenth Edition (2006 Edition), and NFPA 101A, Guide on Alternative Approaches to Life Safety (2007 Edition). The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Incorporation by reference of these materials was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), Room 1068, 810 Vermont Avenue, NW., Washington, DC 20420, 202-461-6750, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html)

www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director;

(3) Have safe and functioning systems for heating and/or cooling, as needed (a heating or cooling system is deemed to be needed if VA determines that, in the county, parish, or similar jurisdiction where the facility is located, a majority of community residential care facilities or other extended care facilities have one), hot and cold water, electricity, plumbing, sewage, cooking, laundry, artificial and natural light, and ventilation.

(b) [Reserved]

(c) *Interior plan.* The facility must:

(1) Have comfortable dining areas, adequate in size for the number of residents;

(2) Have comfortable living room areas, adequate in size to accommodate a reasonable proportion of residents; and

(3) Maintain at least one functional toilet and lavatory, and bathing or shower facility for every six people living in the facility, including provider and staff.

(d) *Laundry service.* The facility must provide or arrange for laundry service.

(e) *Residents' bedrooms.* Residents' bedrooms must:

(1) Contain no more than four beds;

(2) Measure, exclusive of closet space, at least 100 square feet for a single-resident room, or 80 square feet for each resident in a multiresident room; and

(3) Contain a suitable bed for each resident and appropriate furniture and furnishings.

(f) *Nutrition.* The facility must:

(1) Provide a safe and sanitary food service that meets individual nutritional requirements and residents' preferences;

(2) Plan menus to meet currently recommended dietary allowances;

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(g) *Activities.* The facility must plan and facilitate appropriate recreational and leisure activities to meet individual needs.

(h) *Residents' rights.* The facility must have written policies and procedures that ensure the following rights for each resident:

(1) Each resident has the right to:

(i) Be informed of the rights described in this section;

(ii) The confidentiality and non-disclosure of information obtained by community residential care facility staff on the residents and the residents' records subject to the requirements of applicable law;

(iii) Be able to inspect the residents' own records kept by the community residential care facility;

(iv) Exercise rights as a citizen; and

(v) Voice grievances and make recommendations concerning the policies and procedures of the facility.

(2) *Financial affairs.* Residents must be allowed to manage their own personal financial affairs, except when the resident has been restricted in this right by law. If a resident requests assistance from the facility in managing personal financial affairs the request must be documented.

(3) *Privacy.* Residents must:

(i) Be treated with respect, consideration, and dignity;

(ii) Have access, in reasonable privacy, to a telephone within the facility;

(iii) Be able to send and receive mail unopened and uncensored; and

(iv) Have privacy of self and possessions.

(4) *Work.* No resident will perform household duties, other than personal housekeeping tasks, unless the resident receives compensation for these duties or is told in advance they are voluntary and the patient agrees to do them.

(5) *Freedom of association.* Residents have the right to:

(i) Receive visitors and associate freely with persons and groups of their own choosing both within and outside the facility;

(ii) Make contacts in the community and achieve the highest level of independence, autonomy, and interaction

in the community of which the resident is capable;

(iii) Leave and return freely to the facility, and

(iv) Practice the religion of their own choosing or choose to abstain from religious practice.

(6) *Transfer.* Residents have the right to transfer to another facility or to an independent living situation.

(i) *Records.* (1) The facility must maintain records on each resident in a secure place.

(2) Facility records must include:

(i) Emergency notification procedures; and

(ii) A copy of all signed agreements with the resident.

(3) Records may only be disclosed with the resident's permission, or when required by law.

(Approved by the Office of Management and Budget under control number 2900-0491)

(j) *Staff requirements.* (1) Sufficient, qualified staff must be on duty and available to care for the resident and ensure the health and safety of each resident.

(2) The community residential care provider and staff must have the following qualifications: Adequate education, training, or experience to maintain the facility.

(k) *Cost of community residential care.*

(1) Payment for the charges of community residential care is not the responsibility of the United States Government or VA.

(2) The resident or an authorized personal representative and a representative of the community residential care facility must agree upon the charge and payment procedures for community residential care.

(3) The charges for community residential care must be reasonable:

(i) For residents in a community residential care facility as of June 14, 1989, the rates charged for care are pegged to the facility's basic rate for care as of July 31, 1987. Increases in the pegged rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year;

(ii) For community residential care facilities approved after July 31, 1987, the rates for care shall not exceed 110

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percent of the average rate for approved facilities in that State as of March 31, 1987. Increases in this rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year.

(iii) The approving official may approve a deviation from the requirements of paragraphs (k)(3)(i) through (ii) of this section upon request from a community residential care facility representative, a resident in the facility, or an applicant for residency, if the approving official determines that the cost of care for the resident will be greater than the average cost of care for other residents, or if the resident chooses to pay more for the care provided at a facility which exceeds VA standards.

(Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989, as amended at 54 FR 22754, May 26, 1989. Redesignated at 61 FR 21965, May 13, 1996, as amended at 61 FR 63720, Dec. 2, 1996; 69 FR 18803, Apr. 9, 2004; 74 FR 63308, Dec. 3, 2009]

§ 17.64 [Reserved]

§ 17.65 Approvals and provisional approvals of community residential care facilities.

(a) An approval of a facility meeting all of the standards in 38 CFR 17.63 based on the report of a VA inspection and any findings of necessary interim monitoring of the facility shall be for a 12-month period.

(b) The approving official, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, may provide a community residential care facility with a provisional approval if that facility does not meet one or more of the standards in 38 CFR 17.63, provided that the deficiencies do not jeopardize the health or safety of the residents, and that the facility management and VA agree to a plan of correcting the deficiencies in a specified amount of time. A provisional approval shall not be for more than 12 months and shall not be for more time than VA determines is reasonable for correcting the specific deficiencies.

(c) An approval may be changed to a provisional approval or terminated

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under the provisions of §§ 17.66 through 17.71 because of a subsequent failure to meet the standards of § 17.63 and a provisional approval may be terminated under the provisions of §§ 17.66 through 17.71 based on failure to meet the plan of correction or failure otherwise to meet the standards of § 17.63.

(Authority: 38 U.S.C. 1730)

[74 FR 63308, Dec. 3, 2009]

§ 17.66 Notice of noncompliance with VA standards.

If the hearing official determines that an approved community residential care facility does not comply with the standards set forth in § 17.63 of this part, the hearing official shall notify the community residential care facility in writing of:

(a) The standards which have not been met;

(b) The date by which the standards must be met in order to avoid revocation of VA approval;

(c) The community residential care facility's opportunity to request an oral or paper hearing under § 17.51n of this part before VA approval is revoked; and

(d) The date by which the hearing official must receive the community residential care facility's request for a hearing, which shall not be less than 10 calendar days and not more than 20 calendar days after the date of VA notice of noncompliance, unless the hearing official determines that noncompliance with the standards threatens the lives of community residential care residents in which case the hearing official must receive the community residential care facility's request for an oral or paper hearing within 36 hours of receipt of VA notice.

(Authority: 38 U.S.C. 1730)

[54 FR 20842, May 15, 1989. Redesignated and amended at 61 FR 21965, 21967, May 13, 1996]

§ 17.67 Request for a hearing.

The community residential care facility operator must specify in writing whether an oral or paper hearing is requested. The request for the hearing must be sent to the hearing official. Timely receipt of a request for a hearing will stay the revocation of VA approval until the hearing official issues